

Interesting Facts

- Over the last 20 years, immigration laws have changed dramatically. Most noticeably in the areas of detention and removal of non-citizens with criminal convictions
 - 1986- 978 non-citizens removed from our country based on criminal convictions
 - 2012- 225,000 non-citizens removed from our country based on criminal convictions
- As a result, this is making us have to be more vigilant about explaining to our clients that they need to be focused not just on the criminal sanction, but just as importantly on the immigration consequences.

Where does making a difference begin?

- It all begins at the first meeting with your client
- We can let ourselves be fooled their fluency in English or lack of an accent.
- Building their trust. They get scared when you ask them about their immigration status because they think you will report them to the Department of Homeland Security.
- Explain to them what the attorney client privilege means and how they are protected by it.
- Explain to them that you can't adequately advise them unless they give you good information.

What are some basic immigration-related questions you should be asking your client?

1. Where were you born?
2. What is your status in the country? Do you have any documentation of your status? Do you have a green card?
3. When did you arrive in the U.S.A?
4. Where was your spouse, child, and or parent born?
5. Have you ever been to immigration court?
6. Have you ever been arrested? What for and where?
7. Have you ever been convicted of a crime? If so, what, and where?

What are the most common types of “status” a person who is not a United States Citizen but staying in our country have?

1. Lawful Permanent Resident(aka LPR's or Green Card holder)
 - Authorized to live and work in the United States indefinitely, but they can lose their lawful permanent residence status and be deported if they commit certain types of crimes that trigger grounds of deportability or inadmissibility or stay abroad for too long.
 - People who have been LPRs for 5 years (or less in some cases) may apply to naturalize, or become U.S. citizens.

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2. Visa Holders(Non-Immigrants)

- Commonly students, visitors or tourists.
- Lawfully present in the United States for a limited period of time and for a designated purpose, such as visiting or going to school.

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3. Temporary Protected Status and Deferred Enforced Departure

- Temporary Protected Status (TPS) is a form of temporary lawful status granted to nationals (who meet certain criteria) of designated countries (or parts thereof) to which it would be very dangerous to return due to armed conflict, environmental disasters, or other extraordinary and temporary conditions.
- The Attorney General designates the countries whose nationals may be eligible for TPS. During the period for which the Attorney General has designated a country under the TPS program, TPS beneficiaries are not required to leave the United States and may obtain work authorization.
- When the Attorney General terminates a country’s TPS designation, beneficiaries lose TPS status.

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- TPS Designated Countries: Nicaragua, El Salvador, Honduras, Somalia, Sudan, Haiti, South Sudan, and most recently Syria.
- Deferred Enforced Departure – Deferred Enforced Departure is granted at the discretion of the President of the U.S. typically for humanitarian reasons. This is not an immigration status, but it does allow individuals from designated countries to remain for limited periods in the U. S. Nationals of Liberia (a former TPS designated country) as of September 30, 2007 have been granted Deferred Enforced Departure which provides them with permission to remain temporarily and provides employment authorization for 18 months (through March 31, 2013).

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4. Asylum and Refugee Status

- Non-citizens who have experienced past persecution or have a well-founded fear of future persecution in their home countries may apply for asylee or refugee status.
 - People who are already in the U.S. may apply for asylum.
 - People who are still outside the U.S. may apply for refugee status.
 - People who are granted asylee or refugee status may remain in the U.S. indefinitely and receive work authorization indefinitely.
 - They may apply for permanent resident status one year after being granted asylee or refugee status.
- Note: There are many other forms of lawful status and it is sometimes complicated to determine whether or not a person has such status. You should direct any inquiries about a client’s immigration status to an immigration attorney or a legal service provider like ILAP competent in immigration matters.

How do our clients come to the attention of immigration authorities?

1. Traveling Abroad - Upon re-entering the United States, all non-citizens have to go through Department of Homeland Security inspection. Many non-citizens who in the past have traveled to their home countries in the past have done so without any problems. The Department of Homeland Security has updated its computers and has access to criminal records and prior orders of deportation. If your clients have criminal convictions, they should consult an immigration practitioner before traveling abroad.
- NOTE: There is no statute of limitations under the immigration laws. Your client may be stopped for convictions that occurred many years ago.

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2. Your Client Gets Interviewed While Serving Time - The Department of Homeland Security has officers present at most state, city and local jails and prisons. Once your client is serving any time, they are likely to be interviewed by Department of Homeland Security officials and placed into removal proceedings if there is a basis under the immigration laws to do so. The Department of Homeland Security officer will first place a “DHS detainer” on your client. Once your client has completed his/her sentence, s/he will be transferred to Department of Homeland Security custody. A detainer will prevent your client from being released and allowed to participate in most drug or rehabilitation programs.

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3. Applications to USCIS - Most, if not all, applications to the United States Citizenship and Immigration Services (USCIS) now require security clearances and/or fingerprints to be taken as part of the application process. This includes applications for citizenship, renewal of green cards and employment authorization documents. USCIS now uses very sophisticated databases for their security clearances which can identify old criminal convictions from anywhere in the U.S. When fingerprints are taken, a RAP sheet is generated. If the applicant has a conviction, the application is likely to be denied and the applicant very likely will be placed in removal proceedings. We are hearing about more and more cases of persons being picked up and detained at USCIS interviews.

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4. Prior Orders of Deportation - Department of Homeland Security has a campaign to apprehend persons who have not surrendered for deportation despite an order of deportation. Many clients may not even know that they have been ordered deported or they may think that because the deportation order was entered many years ago it is no longer a problem. Persons with prior orders of deportation have been entered onto a national “Absconder” database. Immigration authorities have been working together with local law enforcement to identify and apprehend “absconders” whether they get stopped at a border or due to a traffic violation.

How do our clients come to the attention of immigration authorities?

5. Secure Communities (S. Comm) - is a federal enforcement tool designed to facilitate the identification and deportation of non-citizens with serious criminal convictions. States are required under the program to provide information regarding arrests of citizens and non-citizens to the Federal Bureau of Investigation. This information becomes part of the National Criminal Information Center's (NCIC) database which is available to the Department of Homeland Security. As a result of "Secure Communities" many more non-citizens are identified for removal at the arrest or arraignment stage of a criminal proceeding and ICE warrants/detainers are lodged to ensure that removal proceedings are commenced soon after the criminal case is completed.

What are some of the immigration consequences of criminal convictions?

- Under the Immigration and Nationality Act, a non-citizen can be removed from this country if they are convicted of certain qualifying offenses. The qualifying offenses and the penalty one may face fall under a number of different categories.
- The grounds for removal are either “deportability” or “inadmissibility.” Both grounds include non-citizens who are here legally or are attempting to be here legally.
 1. Crimes which will likely render a non-citizen mandatorily removable on the ground of deportability, including lawful permanent residents and others who are here legally:

What are some of the immigration consequences of criminal convictions?

- The term “aggravated felony” is an immigration term of art. Some crimes that are defined as “aggravated felonies” under immigration law may be considered misdemeanors under various state’s laws. An aggravated felony conviction will bar your client from most form of relief and will likely make your client subject to mandatory removal.

What are some of the immigration consequences of criminal convictions?

- Examples of aggravated felonies include-
 - Murder
 - Rape
 - Sexual abuse of a minor
 - Drug trafficking(any drug sale or possession with intent to sell)
 - Firearms trafficking
 - Crimes of violence for which the penalty imposed is at least one year
 - Theft or burglary for which the penalty imposed is at least one year
 - Prostitution business(Crimes related to owning, controlling, managing or supervising a prostitution business)
 - Crime of fraud or deceit in which the loss to the victim exceeds \$10,000
 - Failure to appear for service of sentence if the underlying offense is punishable for imprisonment for five years or more
 - Crime related to commercial bribery where the penalty imposed is at least one year
 - Crime related to obstruction of justice where the penalty imposed is at least one year

What are some of the immigration consequences of criminal convictions?

- Many of the above crimes become aggravated felonies because the sentence is one year or more. This applies even if the sentence is suspended. If you are able to get a sentence of 364 days or less, it may help your client remain eligible for relief after.

There are also offenses that are not
“aggravated felonies” but are deportable.

Those offenses include the following:

Crimes Involving Moral Turpitude (CIMT): Defined through case law as crimes which are “inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.”

In general, crimes of moral turpitude fall into the following categories:

- (i) crimes in which an intent to steal or defraud is an element;
- (ii) crimes in which bodily harm is caused or threatened, by an intentional or willful act;
- (iii) crimes in which serious bodily harm is caused or threatened by a reckless act; or
- (iv) sex offenses.

**There are also offenses that are not
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Those offenses include the following:

They include -- but are not limited to -- aggravated assault, sexual abuse (even if it did not involve a minor), kidnapping, arson, malicious destruction of property, criminal possession of stolen property, bribery, forgery, any crime involving either theft (such as robbery, burglary or larceny) or fraud (such as welfare fraud). However, not every crime within each of the categories will always be a CIMT.

What are other criminal convictions that I should be really concerned about having my client plea to?

- Controlled substance offenses
- Firearms offenses, including possession
- Domestic violence and stalking
- Violation of protection order
- Failure to register as a sex offender

What are other criminal convictions that I should be really concerned about having my client plea to?

If your client is convicted of a crime, they may be able to get a waiver that will allow them to stay in this country. There are a number of circumstances involving the client's personal story, country of origin and special circumstances involving the conviction that may help the client remain in the country. Whether your client is convicted of an offense or not, he should see an immigration attorney after conviction to explore these options.

What are some convictions that may not lead to your client's removal

- Disorderly conduct(loud noises)
- Marijuana possession of 30 grams or less

How about some thoughts and suggestions

- Don't be afraid to ask for help. Immigration law is complex and mistakes can be disastrous for you and your client.
- If you are in any doubt, you should probably seek the assistance of an immigration attorney or ILAP
- Get help soon in the representation process of your client
- Get the basic information in the 7 questions I laid out earlier in the presentation. ILAP will like this.
- Green cards are not enough to insulate a client from deportation
- Your client may not be in trouble with immigration now, but they may be in trouble later. These convictions don't go away.
- Your client should not think he will not be deported to a country we are not deporting to right now. Things change. Governments can become more stable.